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Maryland Historical Trust

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CODE OF MARYLAND

Criminal Law Article

TITLE 10. CRIMES AGAINST PUBLIC HEALTH, CONDUCT, AND SENSIBILITIES

Subtitle 4. Crimes Relating to Human Remains

§ 10-401. Definitions.

(a) *In general.*- In this subtitle the following words have the meanings indicated.

(b) *Associated funerary object.*

- (1) "Associated funerary object" means an item of human manufacture or use that is intentionally placed:
 - (i) with human remains at the time of interment in a burial site; or
 - (ii) after interment, as a part of a death ceremony of a culture, religion, or group.
- (2) "Associated funerary object" includes a gravestone, monument, tomb, or other structure in or directly associated with a burial site.

(c) *Burial site.*-

- (1) "Burial site" means a natural or prepared physical location, whether originally located below, on, or above the surface of the earth, into which human remains or associated funerary objects are deposited as a part of a death ceremony of a culture, religion, or group.
- (2) "Burial site" includes the human remains and associated funerary objects that result from a shipwreck or accident and are left intentionally to remain at the site.

(d) *Permanent cemetery.*- "Permanent cemetery" means a cemetery that is owned by:

- (1) a cemetery company regulated under Title 5 of the Business Regulation Article;
- (2) a nonprofit organization; or
- (3) the State.

§ 10-402. Removing human remains without authority.

(a) *Prohibited.*- Except as provided in subsection (b) of this section, a person may not remove or attempt to remove human remains from a burial site.

Criminal Law Article

Title 10. Crimes Against Public Health, Conduct, and Sensibilities

Subtitle 4. Crimes Relating to Human Remains

Page 2 of 5

(b) *Exception.*- Subject to subsection (c) of this section, the State's Attorney for a county may authorize in writing the removal of human remains from a burial site in the State's Attorney's jurisdiction:

- (1) to ascertain the cause of death of the person whose remains are to be removed;
- (2) to determine whether the human remains were interred erroneously;
- (3) for the purpose of reburial; or
- (4) for medical or scientific examination or study allowed by law.

(c) *Same* - Notice.-

- (1) Except as provided in paragraph (4) of this subsection, the State's Attorney for a county shall require a person who requests authorization to relocate permanently human remains from a burial site to publish a notice of the proposed relocation in a newspaper of general circulation in the county where the burial site is located.
- (2) The notice shall be published in the newspaper one time.
- (3) The notice shall contain:
 - (i) a statement that authorization from the State's Attorney is being requested to remove human remains from a burial site;
 - (ii) the purpose for which the authorization is being requested;
 - (iii) the location of the burial site, including the tax map and parcel number or liber and folio number; and
 - (iv) all known pertinent information concerning the burial site, including the names of the persons whose human remains are interred in the burial site, if known.
- (4)
 - (i) The State's Attorney may authorize the temporary relocation of human remains from a burial site for good cause, notwithstanding the notice requirements of this subsection.
 - (ii) If the person requesting the authorization subsequently intends to relocate the remains permanently, the person promptly shall publish notice as required under this subsection.
- (5) The person requesting the authorization from the State's Attorney shall pay the cost of publishing the notice,
- (6) The State's Attorney may authorize the removal of the human remains from the burial site after:
 - (i) receiving proof of the publication required under paragraph (1) of this subsection; and
 - (ii) 15 days after the date of publication.
- (7) This subsection may not be construed to delay, prohibit, or otherwise limit the State's Attorney's authorization for the removal of human remains from a burial site.
- (8) For a known, but not necessarily documented, unmarked burial site, the person requesting authorization for the removal of human remains from the burial site has the burden of proving by archaeological excavation or another acceptable method the precise location and boundaries of the burial site.

(d) *Same* - Reinterment.

- (1) Any human remains that are removed from a burial site under this section shall be reinterred in:
 - (i) 1. a permanent cemetery that provides perpetual care; or
 2. a place other than a permanent cemetery with the agreement of a person in interest as defined under § 14-121(a)(4) of the Real Property Article; and

Criminal Law Article

Title 10. Crimes Against Public Health, Conduct, and Sensibilities

Subtitle 4. Crimes Relating to Human Remains

Page 3 of 5

(ii) in the presence of:

1. a mortician, professional cemeterian, or other individual qualified in the interment of human remains;
2. a minister, priest, or other religious leader; or
3. a trained anthropologist or archaeologist.

(2) The location of the final disposition and treatment of human remains that are removed from a burial site under this section shall be entered into the local burial sites inventory or, if no local burial sites inventory exists, into a record or inventory deemed appropriate by the State's Attorney or the Maryland Historical Trust.

(e) *Construction of section.*- This section may not be construed to:

- (1) preempt the need for a permit required by the Department of Health and Mental Hygiene under § 4-215 of the Health-General Article to remove human remains from a burial site; or
- (2) interfere with the normal operation and maintenance of a cemetery, as long as the operation and maintenance of the cemetery are performed in accordance with State law.

(f) *Penalty.*- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(g) *Statute of limitations and in banc review.*- A person who violates this section is subject to § 5-106(b) of the Courts Article.

§ 10-403. Removal of human remains or funerary object.

(a) *Scope of section.*- This section does not apply to:

- (1) a person acting in the course of medical, archaeological, educational, or scientific study;
- (2) a licensed mortician or other professional who transports human remains in the course of carrying out professional duties; or
- (3) a person acting under the authority of:
 - (i) § 10-402 of this subtitle; or
 - (ii) § 4-215 or § 5-408 of the Health-General Article.

(b) *Prohibited.*- A person may not knowingly sell, buy, or transport for sale or profit, or offer to buy, sell, or transport for sale or profit:

- (1) unlawfully removed human remains; or
- (2) an associated funerary object obtained in violation of § 10-404 of this subtitle.

(c) *Penalty.*- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both.

(d) *Appropriation and disposition.*- The Maryland Historical Trust may appropriate all human remains and associated funerary objects obtained in violation of this subtitle for management, care, and administration until a determination of final disposition as provided by law.

(e) *Construction of section.*- This section may not be construed to interfere with the normal operation and maintenance of a cemetery including:

- (1) correction of improper burial siting; and
- (2) moving the human remains within a cemetery with the consent of a person who qualifies as an heir as defined in § 1-101 of the Estates and Trusts Article.

§ 10-404. Cemetery - Destroying funerary objects; indecent conduct.

(a) *Prohibited - Destruction of funerary object; exception for repair or replacement.*-

(1) Subject to the provisions of paragraph (2) of this subsection, a person may not willfully destroy, damage, deface, or remove:

- (i) an associated funerary object or another structure placed in a cemetery; or
- (ii) a building, wall, fence, railing, or other work, for the use, protection, or ornamentation of a cemetery.

(2) The provisions of paragraph (1) of this subsection do not prohibit the removal of a funerary object or a building, wall, fence, railing, or other object installed for the use, protection, or ornamentation of a cemetery or burial site, for the purpose of repair or replacement, either at the request of or with the permission of heirs or descendants of the deceased or the owner or manager of the cemetery or burial site.

(b) *Same - Destruction of foliage; exception for routine care and maintenance.*-

(1) Subject to the provisions of paragraph (2) of this subsection, a person may not willfully destroy, damage, or remove a tree, plant, or shrub in a cemetery.

(2) The provisions of paragraph (1) of this subsection do not prohibit normal maintenance of a cemetery or burial site, including trimming of trees and shrubs, removal of weeds or noxious growths, grass cutting, or other routine care and maintenance.

(c) *Same - Indecent or disorderly conduct.*- A person may not engage in indecent or disorderly conduct in a cemetery.

(d) *Penalty.*- A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

- (1) for a violation of subsection (a) of this section, imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both; and
- (2) for a violation of subsection (b) or (c) of this section, imprisonment not exceeding 2 years or a fine not exceeding \$500 or both.

(e) *Construction of section.*- This section does not prohibit the removal of human remains or a funerary object from an abandoned cemetery if:

Criminal Law Article

Title 10. Crimes Against Public Health, Conduct, and Sensibilities

Subtitle 4. Crimes Relating to Human Remains

Page 5 of 5

- (1) the removal is authorized in writing by the State's Attorney of the county in which the cemetery containing the human remains or funerary object is located; and
- (2) the human remains or funerary object are placed in an accessible place in a permanent cemetery.

[An. Code 1957, art. 27, § 267(b)-(d); 2002, ch. 26, § 2; 2003, ch. 21, § 1; 2005, ch. 208; 2006, ch. 38.]